IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(1) Writ Petition No. 3112 of 2004

Philips Employees Union:Mumbai ..Petitioner

vs.

1. Mr.P.T.Jagtap & Ors. ..Respondents

Mr.K.K.Singhavi, Sr.Counsel with Mr.Shaikh i/b Mr.Sanjay Udeshi & Co. for petitioners

Mr.S.M.Dixit, A.G.P. for State.

(2) Writ Petition No.3175 of 2004

1. Kishor S.Lad & Ors. ..Petitioners

vs.

1. State of Maharashtra & Ors. ..Respondents

Mr.S.K.Talsania i/b Mr.V.P.Vaidya for petitioners
Mr.S.M.Dixit, A.G.P. for respondent nos. 1 and 2
Ms.Mitra Das i/b Mr.V.S.Kunder for respondent no.3
Mr.J.P.Cama with Mr.Akhtar Shaikh i/b Mr.Sanjay Udeshi for respondent no.4

CORAM: A.P.SHAH &
S.J.VAZIFDAR JJ.
9th March, 2005

P.C.

. Rule is issued on both petitions. Respondents waive service. By consent, rule is made returnable forthwith.

2. These two petitions have been filed on behalf of the employees who had accepted Voluntary Retirement Scheme (VRS) under a Memorandum of

Settlement dated 10th December, 2001. Writ Petition No. 3112 of 2004 has been filed by the recognised Trade Union whereas Writ Petition No.3175 of 2004 is filed by some of the employees who have accepted VRS under the settlement dated 10th December, 2001. Respondent Nos.1 and 2 to the petition are Additional Commissioner of Labour and State Govt. and respondent no.3 is the company. By the said Memorandum of Settlement it was, inter alia, agreed that the benefits stated therein were inclusive of any benefits available under Mumbai VRS 2001 Scheme which were to be formulated as per the settlement dated 10th December, 2001. It is the grievance of the petitioners that there was short fall in payment of VRS amounts and the employees were paid less commuted amounts and monthly pensions than what was promised in the settlement dated 10th December, 2001. It appears that the Union took the matter with the management and complained that not only commuted amount was less than 33% but even the monthly pension was also reduced disproportionately. A notice was also served on the company through the advocate but the company chose to dispute the claim of the petitioners and, therefore, an industrial dispute was raised by the Union vide letters dated 11th June, 2002 and 20th August, 2002 Exh.U and X to the

petition. It is the grievance of the petitioners that Conciliation Officer has failed to take further steps as required by the Industrial Disputes Act despite requests and reminders and, therefore, the petitioners are seeking a direction to the respondent nos. 1 and 2 to take the matter in conciliation and make failure report in the event of failure and to make an order referring the dispute raised to the Industrial Tribunal.

2. On behalf of respondent nos.1 and 2 Additional Commissioner of Labour has filed the affidavit in reply to the petition contending that by virtue of the settlement which was arrived at between the Union and Management of the company, without giving proper thought to the said VRS the members have no choice but to accept the VRS and after accepting the VRS relationship between the management and the workmen came to an end. The respondent no.3 has also filed affidavit in reply contending that the employees have voluntarily retired from service, received consideration for the same as part of the concluded contract and, therefore, issue of VRS does not form subject matter of an industrial dispute within the meaning of sec.2(k) of the Industrial Disputes Act, 1947.

3. Mr.Cama, learned Counsel appearing for the petitioners, brought to our notice the decision of the Division Bench in Ceat Ltd.(Electronics Division) Vs. Anand Aba Saheb Hawaldar and ors; 2003 II CLR 741 where the submission of the company was that 6 employees who filed complaint were not "workmen" under sec.2(s) of Industrial Disputes Act and, therefore, not employees under sec.3(5) of M.R.T.U.and P.U.L.P.Act, 1971 as on acceptance of VRS, the relationship of employer and employees came to an end. The Division Bench after examining the relevant judgments of the Apex Court as well as this Court concluded as follows:

> "39. In our considered opinion, therefore, the grievance of the workmen was referable to and had nexus with the act complained of which took place in 1992 when first VRS was accepted by them and certain benefits were granted. Obviously, therefore, Industrial Court had jurisdiction as they could be said to be "workmen" for that limited purpose. In our opinion, therefore, neither the Industrial Court nor the learned single Judge had committed any error of law and/or jurisdiction in entertaining the complaint and in deciding it."

Applying this ratio the grievance of the employees in the present case is also referable to and has nexus with the act complained of which took place in 2001 when the VRS was accepted by them and certain benefits were granted and, therefore, for that limited purpose they could be said to be the workmen within the meaning of sec.2(s) of I.D.Act.

4. Our attention was also drawn to the decision of the learned single Judge of this Court (Radhakrishnan J.) in Writ Petition no.2154 of 2000. This petition was preferred by the respondent no.3 Company against the order of the Industrial Tribunal. It appears that in 1993 respondent no.3 Company had introduced VRS scheme and the employees who accepted the said VRS realised that the lumpsum received was far less than promissed, some of them raised an industrial dispute by serving a notice on the company. The dispute which was raised through the aforesaid demand was then taken into conciliation and pursuant to failure of conciliation the dispute was referred for adjudication to the Industrial Tribunal being Reference (ID) No.9 of 1996. Industrial Tribunal by its award dated 12th June, 2000 rejected the defence of the company that the

reference was not maintainable under the provisions of the Industrial Disputes Act and the reference was partly allowed and the 3rd respondent was directed to pay to the workmen listed in the annexure to the demand notice the difference in the commuted amount paid to them as lumpsum and the amount equivalent to the third of the total amount due to them under VRS 1993 with interest at the rate of 18% p.a. The award of the Industrial Tribunal was challenged by respondent no.3 in Writ Petition No.2154 of 2000. The learned single Judge in terms held that there was no perversity or illegality in the finding of the Industrial Tribunal that 15% discounting factor was totally impermissible and the employees were not informed about the same and that they were defrauded. Respondent no.3 filed an appeal being Appeal No.36 of 2001 where the consent terms were filed by the parties and the amount was paid to the employees as per VRS.

5. In the present case also Union and employees have raised a dispute that the company has made unauthorised deductions from the VRS amount payable to the employees and the grievance made by the employees would fall within the definition of industrial dispute as defined by sec.2(s) of the

Industrial Disputes Act. The learned Counsel appearing for respondent no.3, however, relying upon the decision of the Apex Court in A.K.Bindal and another Vs. Union of India ; 2003(98) FLR 1. submitted that the dispute raised by the employees cannot be referred to the Industrial Tribunal. In that case the issue before the Apex Court was regarding revision of pay scale of officers of Fertilizer Corporation of India and Hindustan Fertilizer Corporation. During the pendency of the proceedings the Central Government announced a scheme for voluntary retirement for the employees of the Central Public Sector Undertakings. The Office Memorandum dated 5th May 2000 whereby the scheme was introduced provided that for sick and unviable units, the VRS package of Department of Heavy Industry will be adopted. Under the said scheme the employee was entitled to ex-gratia payment equivalent to 45 days emoluments (pay + D.A.) for each completed year of service or the monthly emoluments at the time retirement, whichever is less. This was in addition to terminal benefits. The Government was conscious about the fact that the pay scales of some of the PSUs had not been revised with effect from 1.11.1992 and, therefore, it had provided adequate compensation in that regard in the second VRS which

was announced for all Central Public Sector Undertakings on 6.11.2002. In the context of this factual background, the Supreme Court held as follows:

> "34. This shows that a considerable amount is to be paid to an employee ex-gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as "Golden Handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights,

with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

35. The contention that the employees opted for VRS under any kind of compulsion is not worthy of acceptance. The petitioners are officers of the two companies and are mature enough to weigh the pros and cons of the options which were available to them. They could have waited and pursued their claim for revision of pay scale without opting for VRS. However, they, in their wisdom though that in the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of compulsion. In view of the fact that nerely ninety per cent of employees have availed of

the VRS scheme and have left the companies (FCI and HFC) the writ petition no longer survives and has become infructuous."

6. The facts in the present case are clearly distinquishable as the grievance raised by the Union is that the employees were not paid the amount of commutted pension and monthly pention as promised in VRS and there was a short fall in payment. In the circumstances, the Conciliation Officer is not right in contending that after having accepted the VRS the relationship between the employee and management has come to an end. The grievance of the petitioners had a direct nexus with the 2001 VRS which had been accepted by them and certain benefits have been given to them and for that limited purpose they could be said to be workmen within the meaning of Industrial Disputes Act.

7. In view of foregoing discussion, we direct the Conciliation Officer to take the dispute in conciliation and submit a failure report in the event of failure within 4 weeks. Respondent no.2 on receipt of failure report shall pass appropriate

orders in accordance with law within four weeks.

8. Petitions are accordingly disposed of.